

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:

JOHN DAVID LEILL, SR.  
PAULA JANE LEILL

Debtors

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CASE NO. 05-40984

**DECISION AND ORDER**

At Fort Wayne, Indiana, on February 13, 2006.

On January 10, 2006, the court held a pretrial conference with regard to issues raised by a motion for relief from stay filed on behalf of DaimlerChrysler Services North America and the debtors' objection thereto. The debtors appeared for this conference, through their counsel, Jerry Paeth, as did the trustee. Movant's counsel, Dennis Ostrowski, was nowhere to be seen. As a result, the court denied the motion for relief from stay and, on its own motion, issued an order requiring Mr. Ostrowski to show cause in writing why he should not be required to pay the reasonable attorney fees incurred by the debtors and the trustee as the result of the scheduled pre-trial conference. The order was issued pursuant to Rule 16(f) of the Federal Rules of Civil Procedure which authorizes the court to impose sanctions, including the payment of attorney fees, upon an attorney who fails to appear for a pretrial conference or who is substantially unprepared to participate in such a conference. The requirements of this rule are made applicable to these proceedings by both the Federal Rules of Bankruptcy Procedure and the local rules of this court. See, Fed. R. Bankr. P. Rule 7016; N.D. Ind. L.B.R. B-7016(1)(b). Mr. Ostrowski filed a timely response to the court's order to show cause and it is that response which brings the matter before the court for a decision.

From the court's perspective there are only a few salient features of counsel's response upon

which it needs to focus. To begin with, counsel states that the motion for relief from stay was filed in error and should have been withdrawn. Secondly, counsel indicates that he failed to attend the pretrial conference because no one in his office reviewed the December 29, 2005 order scheduling it until January 13, 2006. By that time it was, of course, too late for counsel to attend an event that had taken place three days prior.

The failure to attend a pretrial conference is one of the types of misconduct specifically identified by Rule 16(f) as providing the basis for sanctions. At least to the extent that the opposing party should be compensated for the additional costs and expenses incurred because of counsel's non-compliance, the rule is almost, but not quite, mandatory. Unless non-compliance was "substantially justified" or other circumstances would make an award "unjust," the non-defaulting party is entitled to reimbursement. As a result, the imposition of sanctions under the rule does not depend upon a finding of bad faith, willfulness, or contumaciousness. Matter of Sanction of Baker, 744 F.2d 1438, 1440-41 (10th Cir. 1984). A negligent failure to comply will suffice. Id. at 1441. See also, Harrell v. U.S., 117 F.R.D. 86, 88 (D. E.D. N.C. 1987); Barsoumian v. Szozda, 108 F.R.D. 426 (D. S.D. N.Y. 1985).

Counsel's response to the court's order to show cause fails to indicate that his failure to appear for the scheduled pretrial conference was substantially justified or to demonstrate that other circumstances would make an award unjust. The court acknowledges that Mr. Ostrowski's absence was not willful or contumacious. It was, instead, simply negligent because whatever procedures his office had in place to identify and process the court's orders scheduling proceedings failed to note the one in question until it was too late. That may make counsel's absence somewhat understandable, but it does not make it substantially justified. Neither does it change the reality that

the trustee and debtor's counsel were required to (and did) go to the trouble of properly preparing for and attending the scheduled pre-trial conference. Because of Mr. Ostrowski's absence, their efforts were wasted and the court sees nothing unjust about requiring an attorney who has unnecessarily caused its opposition to devote time and trouble to a matter to reimburse them for the reasonable value of their labors. In the court's opinion such a result is necessary, not only as a matter of economic and procedural fairness, but also in order to impress upon litigants the importance of appearing for and being prepared for proceedings scheduled with regard to the things they file.

Dennis Ostrowski shall, therefore, pay the reasonable attorney fees and expenses incurred by both the trustee and the debtor as a result of their preparing for and attending the pre-trial conference held in this matter on January 10, 2006. Debtors' counsel and the trustee shall have fourteen (14) days from this date within which time to file and serve affidavits itemizing any such fees and expenses. Mr. Ostrowski shall have ten (10) days thereafter in which to file any objections thereto. In the absence of objection the court will determine the reasonable amount of any fees and expenses without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court